

## GENERAL PROVISIONS

281.210

## RECORDS

**NRS 281.180 Record of official acts of person taking acknowledgments; liability and penalty.**

1. Each person authorized by law to take the proof or acknowledgment of the execution of conveyances of real property, or other instrument required by law to be proved or acknowledged, shall keep a record of all his official acts in relation thereto in a book to be provided by him for that purpose. There shall be entered in the book:

- (a) The date of the proof or acknowledgment thereof.
- (b) The date of the instrument.
- (c) The name or character of the instrument proved or acknowledged.
- (d) The names of each of the parties thereto, as grantor, grantee or otherwise.

During business hours, the record shall be open to public inspection without fee or reward.

2. Any person mentioned in subsection 1 who refuses or neglects to comply with the requirements of this section shall:

- (a) Be punished by a fine of not more than \$500; and
- (b) Be liable on his official bond in damages to any person injured by such refusal or neglect to the extent of the injury sustained by reason of the refusal or neglect mentioned in this subsection.

[1:32:1869; B § 315; BH § 2662; C § 2730; RL § 1098; NCL § 1559] + [2:32:1869; B § 316; BH § 2663; C § 2731; RL § 1099; NCL § 1560]—(NRS A 1967, 548)

WEST PUBLISHING CO.  
Acknowledgment ⇌ 34.

WESTLAW Topic No. 12.  
C.J.S. Acknowledgment § 68.

**NRS 281.190 Unlawful withholding or destruction of records; penalties.**

1. If an officer whose office is abolished by law, or who, after the expiration of the term for which he is appointed or elected, or after he has resigned, or when legally removed from office, willfully or unlawfully withholds or detains from his successor, or other person entitled thereto by law, the records, papers, documents or other writings pertaining or belonging to his office, or mutilates, destroys or takes away any such writing, the person so offending is guilty of a category D felony and shall be punished as provided in NRS 193.130.

2. The provisions of this section apply to any person who has the records, documents, papers or other writings in his possession, and willfully mutilates, withholds or detains them.

[63:108:1866; B § 2661; BH § 1698; C § 1844; RL § 2819; NCL § 4819]—(NRS A 1979, 1464; 1995, 1264)

WEST PUBLISHING CO.  
Records ⇌ 22.

WESTLAW Topic No. 326.  
C.J.S. Records §§ 73, 75, 76.

## MISCELLANEOUS PROVISIONS AND PROHIBITIONS

**NRS 281.210 Officers of state, political subdivision and University and Community College System of Nevada prohibited from employing relatives; exceptions; penalties.**

1. Except as otherwise provided in this section, it is unlawful for any person acting as a school trustee, state, township, municipal or county officer, or as an

employing authority of the University and Community College System of Nevada, any school district or of the state, any town, city or county, or for any state or local board, agency or commission, elected or appointed, to employ in any capacity on behalf of the State of Nevada, or any county, township, municipality or school district thereof, or the University and Community College System of Nevada, any relative of such a person or of any member of such a board, agency or commission who is within the third degree of consanguinity or affinity.

2. This section does not apply:

(a) To school districts, when the teacher or other school employee is not related to more than one of the trustees or person who is an employing authority by consanguinity or affinity and receives a unanimous vote of all members of the board of trustees and approval by the state department of education.

(b) To school districts, when the teacher or other school employee has been employed by an abolished school district or educational district, which constitutes a part of the employing county school district, and the county school district for 4 years or more before April 1, 1957.

(c) To the spouse of the warden of an institution or manager of a facility of the department of prisons.

(d) To the spouse of the superintendent of the Caliente youth center.

(e) To relatives of blind officers and employees of the bureau of services to the blind and visually impaired of the rehabilitation division of the department of employment, training and rehabilitation when those relatives are employed as automobile drivers for those officers and employees.

3. Nothing in this section:

(a) Prevents any officer in this state, employed under a flat salary, from employing any suitable person to assist in any such employment, when the payment for the service is met out of the personal money of the officer.

(b) Disqualifies any widow with a dependent as an employee of any officer or board in this state, or any of its counties, townships, municipalities or school districts.

4. A person employed contrary to the provisions of this section must not be compensated for the employment.

5. Any person violating any provisions of this section is guilty of a gross misdemeanor.

[1:75:1925; A 1927, 43; 1935, 172; 1951, 22] + [2:75:1925; NCL § 4852] + [3:75:1925; NCL § 4853]—(NRS A 1957, 704; 1960, 369; 1963, 1178; 1967, 549; 1969, 227; 1973, 563, 1406; 1975, 554; 1977, 870; 1989, 1958; 1993, 374, 1550; 1995, 579; 1997, 1171)

#### ADMINISTRATIVE REGULATIONS.

Supervision of relatives prohibited, NAC 284.375-284.377

#### WEST PUBLISHING CO.

Officers and Public Employees ⇌ 27, 29, 30.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 15 to 35, 89, 90.

#### ATTORNEY GENERAL'S OPINIONS.

County commissioner may not appoint relatives to work on state roads without full board approval. Individual county commissioner

may not appoint relatives to work on state roads, but if appointment is made by full board there is no violation of ch. 19, Stats. 1915 (cf. NRS 281.210). AGO 46 (12-29-1915)

**Employment by county commissioners of person within the prohibited degree of affinity violates the statute.** Employment by board of county commissioners of one who is related to any member of board within degree prohibited by ch. 19, Stats. 1915 (cf. NRS 281.210), is violation of that statute. AGO 120 (6-1-1922); AGO 124 (6-26-1922)

**No appointment of employee within the prohibited degrees of affinity is allowed even if the related board member votes against the appointment.** Wherever power of appointment subsists in board, no valid appointment may be made by that board of employee within prohibited degrees of consanguinity or affinity, even though member of board so related did not vote or voted against appointment. Ch. 19, Stats. 1915 (cf. NRS 281.210). AGO 125 (6-26-1922)

**County officer cannot employ relative as deputy even though deputy is uncompensated.** County officer cannot employ relative as deputy even though deputy serves without compensation. AGO 7 (1-23-1923)

**Employment of brother of board member is prohibited.** Employment by state board of brother of member of board is violation of ch. 75, Stats. 1925 (cf. NRS 281.210), which prohibits employment of relatives within third degree of consanguinity or affinity. AGO 265 (6-8-1927)

**Employment of cousin of wife of justice of supreme court not prohibited.** Employment of cousin of wife of justice of supreme court does not violate ch. 75, Stats. 1925 (cf. NRS 281.210) prohibiting employment of relatives within third degree of consanguinity or affinity because cousin is of the fourth degree. AGO 301 (3-12-1928)

**Employment by state commission of relatives of member is prohibited even though commission is uncompensated.** Ch. 75, Stats. 1925 (cf. NRS 281.210), which prohibits employment of relatives within third degree of consanguinity or affinity, prohibits employment by state commission of member. Fact that members of commission serve without compensation is irrelevant. AGO 291 (1-5-1928)

**Continued employment of teacher by school board when teacher marries member of the board is not prohibited.** Ch. 75, Stats. 1925 (cf. NRS 281.210), does not prohibit continued employment of teacher by school board when teacher later marries daughter of member of school board, though relationship created is within prohibited degree of consanguinity or affinity. AGO 347 (10-3-1929)

**Statute has no application when teacher's employment is consummated by law.** Ch. 151, Stats. 1929, repealed by Stats. 1947, p. 91 (cf. NRS 391.3196), automatically reemploys teacher when school board fails to notify teacher as provided. Nepotism law (see NRS 281.210) has no application under these circumstances, because employment is consummated by law. AGO 384 (8-25-1930)

**Relationship of wife to her husband's aunt's husband not within prohibited degree of affinity.** Relationship of wife to her husband's aunt's husband is not within degree of consan-

guinity or affinity of NCL § 9862 (see NRS 281.210) which would prevent employment. AGO 79 (6-13-1932)

**If teacher marries school trustee after contracting with the school she is not in violation of the statute.** If teacher signs contract with school board and subsequently, during period of contract, marries one of the trustees, her contract is not in violation of nepotism law. AGO 196 (12-5-1935)

**Purpose of the statute is to prevent patronage by reason of relationship rather than merit.** Purpose of nepotism law is to prevent employment by public officers and boards of relatives within degree of relationship prescribed by statutes, and thus prohibit bestowal of patronage by reason of relationship rather than merit. AGO 196 (12-5-1935)

**The statute is disabling legislation that will not be extended to relationships not enumerated.** Statutes similar in nature to NRS 281.210 have been described as disabling legislation and as being against common right of individual, and, if they enumerate disqualifying relationship, they will not be extended to apply to others not enumerated. AGO 196 (12-5-1935)

**"Widow" as used in the statute has its ordinary meaning.** Use of word "widow" in NCL § 4851 (cf. NRS 281.210) seems to be ordinary or general use of that word and includes only such persons as are generally contemplated under that word. Word "widow" generally means woman who has lost her husband by death and has not taken another husband. AGO 353M (8-24-1942)

**County officer may appoint wife as deputy if he pays her salary.** County officer may appoint wife as deputy so long as he pays her salary. AGO 363M (12-4-1942)

**If successful bidder for county work is son-in-law of commissioner, acceptance of the bid would violate the statute.** If successful bidder for county work is son-in-law of county commissioner, acceptance of bid would be violation of nepotism law. AGO 588 (3-16-1948)

**Purpose of the statute is to prevent patronage of relatives regardless of qualifications.** It seems clear that purpose of nepotism law is to prevent bestowal of patronage by public officers in employing their relatives regardless of qualifications of employee. AGO 203 (9-10-1952)

**Employment of teacher who is wife of school superintendent is not violation of the statute.** Employment of teacher who is wife of school superintendent and works under his direction is employment by board of trustees and thus is not violation of nepotism law (NRS 281.210). AGO 367 (3-24-1958)

**Wife cannot be assistant superintendent of county hospital if husband is on board of trustees.** Wife cannot serve as assistant superintendent of county hospital if husband is member of board of hospital trustees, notwithstanding husband refrains from official action on matters affecting wife's employment or salary. AGO 430 (12-3-1958)

**Person employed at the time of election of his relative to appointing authority may continue in such employment.** Under NRS 281.210, which prohibits employment by state or political subdivision of any person related within third degree of consanguinity or affinity to appointing authority or member thereof, person who was employed at time of election of his relative to appointing authority may continue in such employment. AGO 178 (8-31-1960)

**Statute does not affect appointment to board of directors of power district.** NRS 281.210, which prohibits officials of State of Nevada and enumerated political subdivisions, not specifically naming power or special districts, from employing relatives, does not affect appointment to board of directors of power district, because under former NRS 312.040 district is not municipality, and nepotism statute which restricts freedom of employment should be strictly construed. Maxim inclusio unius est exclusio alterius applies. AGO 210 (3-15-1965)

**Statute not applicable to contract between county commissioners and county surveyors to perform designated services.** NRS 197.110 and 281.230, which prohibit personal interest or

benefit to public officer from public contract, and NRS 281.210, which prohibits employment of relatives by public officers, do not apply to contract between county commissioners and county surveyor to perform designated services for county, because such contract is authorized by NRS 255.060. AGO 215 (4-12-1965)

**Statute applies to department head of state institution.** NRS 281.210, prohibiting employment of relatives within third degree of consanguinity, applies to department head of state institution or organization to whom power to hire and fire has been delegated by superior officer, even though ultimate power rests with superior. AGO 656 (4-9-1970)

**Under statute individual within enumerated class cannot employ or recommend for employment relative within prohibited degree of affinity.** Under NRS 281.210, individual within class enumerated in statute cannot employ, reemploy or recommend for employment relative within 3rd degree of consanguinity or affinity to himself or other individual within same enumerated class if such individual has effective hiring power, regardless of where ultimate hiring power lies. AGO 147 (10-1-1973)

**Board of general improvement district is subject to statute.** Board of general improvement district (see NRS ch. 318) is subject to provisions of NRS 281.210 prohibiting employment of relatives of board members. Board cannot insulate itself from operation of statute by hiring employee who would then hire all other employees for district. AGO 79-B (4-23-1979)

**NRS 281.221 Contracts in which state officer has interest prohibited; exceptions; penalties.**

1. Except as otherwise provided in this section, it is unlawful for any state officer who is not a member of the legislature to:

(a) Become a contractor under any contract or order for supplies or other kind of contract authorized by or for the state or any of its departments, or the legislature or either of its houses, or to be interested, directly or indirectly, as principal, in any kind of contract so authorized.

(b) Be interested in any contract made by him or to be a purchaser or interested in any purchase under a sale made by him in the discharge of his official duties.

2. Any member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by the board, commission or body may supply or contract to supply, in the ordinary course of his business, goods, materials or services to any state or local agency, except the board or commission of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member in the University and Community College System of Nevada may bid on or enter into a contract with a governmental agency if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

4. A state officer, other than an officer described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

5. Any contract made in violation of this section may be declared void at the instance of the state or of any other person interested in the contract except an officer prohibited from making or being interested in the contract.

6. Any person violating this section is guilty of a gross misdemeanor and shall forfeit his office.

(Added to NRS by 1977, 1109; A 1993, 2241; 1995, 689)

#### REVISER'S NOTE.

This section substantially reenacts former NRS 281.220 and 281.235, which was repealed by section 47 of chapter 540, Stats. 1975, in connection with new provisions later declared unconstitutional (*Dunphy v. Sheehan*, 92 Nev. 259 (1976)).

#### WEST PUBLISHING CO.

Officers and Public Employees ⇐ 28, 110, 121.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 34, 197 to 204, 255 to 259.

#### ATTORNEY GENERAL'S OPINIONS.

**Members of local employee-management relations board appointed by governor are subject to prohibitions of statute.** Members of local government employee-management relations board appointed by governor pursuant to NRS 288.080 are nonlegislative state officers subject to prohibitions of NRS 281.221 against contracting or being interested as principals in any contract with state or any of its agencies. AGO 218 (9-20-1977)

### **NRS 281.230 Unlawful commissions, personal profit and compensation of public officers and employees; penalties; payment of commission, profit or compensation to public employer.**

1. Except as otherwise provided in this section and NRS 218.605, the following persons shall not, in any manner, directly or indirectly, receive any commission, personal profit or compensation of any kind resulting from any contract or other transaction in which the employing state, county, municipality, township, district or quasi-municipal corporation is in any way interested or affected:

(a) State, county, municipal, district and township officers of the State of Nevada;

(b) Deputies and employees of state, county, municipal, district and township officers; and

(c) Officers and employees of quasi-municipal corporations.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by the board, commission or body may, in the ordinary course of his business, bid on or enter into a contract with any governmental agency, except the board or commission of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member in the University and Community College System of Nevada may bid on or enter into a contract with a governmental agency if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

4. A public officer or employee, other than an officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract

plans or specifications and he will not be personally involved in opening, considering or accepting offers.

5. A person who violates any of the provisions of this section shall be punished as provided in NRS 197.230 and:

(a) Where the commission, personal profit or compensation is \$250 or more, for a category D felony as provided in NRS 193.130.

(b) Where the commission, personal profit or compensation is less than \$250, for a misdemeanor.

6. A person who violates the provisions of this section shall pay any commission, personal profit or compensation resulting from the contract or transaction to the employing state, county, municipality, township, district or quasi-municipal corporation as restitution.

[1:107:1927; NCL § 4855] + [2:107:1927; NCL § 4856] + [3:107:1927; NCL § 4857]—(NRS A 1957, 363; 1963, 477; 1965, 410; 1967, 550; 1975, 932; 1977, 1110; 1979, 1464; 1987, 1460; 1989, 1441; 1991, 1593; 1993, 2242; 1995, 689, 1264)

#### WEST PUBLISHING CO.

Officers and Public Employees ⇌ 98.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 224, 242.

#### ATTORNEY GENERAL'S OPINIONS.

**Justice of the peace cannot contract with county commissioners for construction of building in his township.** Justice of the peace cannot enter into contract with county commissioners for construction of building within his township. AGO 329 (4-30-1954)

**State planning board not prohibited from contracting with state boards of architecture, professional engineers or contractors for professional service in public works as long as no improper advantage involved.** Former NRS 281.220 and NRS 281.230, which prohibit public officers from entering into or having interest in public contracts, do not prohibit state planning

board from contracting with individual members of state board of architecture, state board of registered professional engineers or state contractors' board for professional service in public works contracts where no improper advantage is involved, because prohibition was not intended to place such individuals, who perform occasional gratuitous civil service, at disadvantage in their own field of endeavor. AGO 253 (11-2-1961)

**Statute and the nepotism law not applicable to contract between county commissioners and county surveyor to perform designated services.** NRS 197.110 and 281.230, which prohibit personal interest or benefit to public officer from public contract, and NRS 281.210, which prohibits employment of relatives by public officers, do not apply to contract between county commissioners and county surveyor to perform designated services for county, because such contract is authorized by NRS 255.060. AGO 215 (4-12-1965)

#### **NRS 281.236 Employment of certain former public officers and employees by regulated businesses prohibited; determination by commission on ethics.**

1. A public utility or parent organization or subsidiary of a public utility shall not employ a former member of the public utilities commission of Nevada for 1 year after the termination of his service on the commission.

2. A person who holds a license issued pursuant to chapter 463 or 464 of NRS or who is required to register with the Nevada gaming commission pursuant to chapter 463 of NRS shall not employ a former member of the state gaming control board or the Nevada gaming commission for 1 year after the termination of the member's service on the board or commission.

3. In addition to the prohibitions set forth in subsections 1 and 2, a business or industry whose activities are governed by regulations adopted by a department, division or other agency of the executive branch of government shall not, except as otherwise provided in subsection 4, employ a former public officer or employee of the agency, except a clerical employee, for 1 year after the termination of his service or period of employment if:

(a) His principal duties included the formulation of policy contained in the regulations governing the business or industry;

(b) During the immediately preceding year he directly performed activities, or controlled or influenced an audit, decision, investigation or other action, which significantly affected the business or industry which might, but for this section, employ him; or

(c) As a result of his governmental service or employment, he possesses knowledge of the trade secrets of a direct business competitor.

4. A public officer or employee may request the commission on ethics to apply the relevant facts in his case to the provisions of subsection 3 and determine whether relief from the strict application of the provisions is proper. If the commission on ethics determines that relief from the strict application of the provisions of subsection 3 is not contrary to:

(a) The best interests of the public;

(b) The continued integrity of state government; and

(c) The code of ethical standards prescribed in NRS 281.481,

it may issue an order to that effect and grant such relief. The decision of the commission on ethics in such a case is subject to judicial review.

5. As used in this section, "regulation" has the meaning ascribed to it in NRS 233B.038.

(Added to NRS by 1987, 570; A 1993, 2496; 1997, 1986)

#### REVISER'S NOTES.

Ch. 266, Stats. 1987, the source of this section, contains the following provision not included in NRS:

"The provisions of section 1 of this act do not apply to the employment of a person who is a member of the public service commission of Nevada, the state gaming control board or the Nevada gaming commission on July 1, 1987, or was a member before July 1, 1987, unless on or after that date, that person is appointed to serve as a member of another commission or board for which subsequent employment is restricted pursuant to section 1 of this act."

Ch. 597, Stats. 1993, the source of subsection 3 of this section, contains the following provision not included in NRS:

"The provisions of subsection 3 of [NRS 281.236] do not apply to the service or employment of a public officer or employee who is serving or is employed by an agency, division or department of the executive branch of government on July 12, 1993, or was such an officer or employee before July 12, 1993, unless on or after that date, that person is appointed to serve as an officer or retained as an employee of another agency, division or department of the executive branch of government for which subsequent employment is restricted pursuant to subsection 3 of [NRS 281.236]."

#### WEST PUBLISHING CO.

Gaming ⇌ 4.

WESTLAW Topic No. 188.

C.J.S. Gaming §§ 50, 82.

### **NRS 281.240 Grant of authority to discharge duties of public office unlawful; giving consideration for grant unlawful; penalties.**

1. Every person holding or exercising any office under the laws or constitution of this state, who shall, for any reward or gratuity paid, or agreed to be paid, grant to another the right or authority to discharge any of the duties of such office (except his lawful deputies), shall be punished by a fine not exceeding \$5,000, and shall be removed from office.

2. Every person who shall give, or make any agreement to give, any reward or gratuity in consideration of such grant or authority, shall be punished by a fine of not more than \$5,000.

[69:108:1866; B § 2667; BH § 1704; C § 1850; RL § 2822; NCL § 4822]—  
(NRS A 1967, 551)

#### WEST PUBLISHING CO.

Officers and Public Employees ⇌ 104.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees § 276.

**NRS 281.250 Administration of oaths and affirmations by officers.** Every officer authorized to take testimony or to decide upon the evidence in any proceeding shall have power to administer oaths or affirmations.

[Part 1911 CPA § 541; RL § 5483; NCL § 9030]

WEST PUBLISHING CO.

Oath ⇌ 2.

WESTLAW Topic No. 280.

C.J.S. Oaths and Affirmations § 4.

**NRS 281.260 Fees for returns prohibited; computation of mileage; penalty.**

1. No officer shall be allowed to charge or receive any fee or compensation whatever for the return written upon any summons, subpoena, writ of attachment, execution, order of sale or other paper. Any officer violating the terms of this subsection shall be fined not more than \$500, and shall be removed from office.

2. Where mileage is chargeable it shall be for the actual distance traveled, and every fraction of a mile shall be computed as a mile. Where mileage is chargeable by a sheriff, it shall be computed as provided in NRS 248.400.

[38:49:1883; BH § 2379; C § 2503; RL § 2040; NCL § 2971] + [Part 39:49:1883; BH § 2380; C § 2504; RL § 2041; NCL § 2972]—(NRS A 1967, 551)

**NRS 281.270 Officer to prevent duel: Penalty.** If any officer bound to preserve the public peace shall have knowledge of an intention, on the part of any two persons, to fight with a deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the persons and prevent the deed, every such officer shall be fined in a sum not exceeding \$1,000.

[Part 70:108:1866; B § 2668; BH § 1705; C § 1851; RL § 2823; NCL § 4823]

WEST PUBLISHING CO.

Officers and Public Employees ⇌ 121.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 255 to 289.

**NRS 281.280 Officer refusing to receive or arrest person charged with criminal offense: Penalties.** If any officer shall willfully refuse to receive or arrest any person charged with a criminal offense, such officer is guilty of a gross misdemeanor and shall be removed from office.

[Part 67:108:1866; B § 2665; BH § 1702; C § 1848; RL § 2820; NCL § 4820]—(NRS A 1967, 551)

WEST PUBLISHING CO.

Officers and Public Employees ⇌ 116, 121.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 206 to 208, 255 to 259.

**NRS 281.290 Officer executing process may command assistance when resistance made.**

1. When a public officer authorized to execute process finds or has reason to apprehend that resistance will be made to the execution of his process, he may command as many inhabitants of his county as he thinks proper, and may call upon the governor for military aid in the manner provided by law, to assist him in overcoming the resistance, and, if necessary, in seizing, arresting and confining the resisters and their aiders and abettors, to be punished according to law.



2. The officer shall certify, to the court from which the process issued, the names of the resisters and their aiders and abettors, to the end that they be proceeded against for their contempt of court.

[Part 83:108:1866; B § 2681; BH § 1718; C § 1864; RL § 2833; NCL § 4833] + [84:108:1866; B § 2682; BH § 1719; C § 1865; RL § 2834; NCL § 4834]— (NRS A 1967, 1341; 1981, 461)

WEST PUBLISHING CO.

Arrest ⇐ 69.

WESTLAW Topic No. 35.

C.J.S. Arrest § 50.

**NRS 281.310 Audits and allowances of accounts of state officers: Affidavits; oaths and affirmations.** In all cases where officers are called upon to audit and allow the accounts of state officers, they shall take and file affidavits of the officers that they have not violated any of the provisions of law. For that purpose all officers, authorized by law to audit and allow accounts, are empowered and required to administer oaths and affirmations, which shall have the same force and validity in all actions for perjury as if administered by a judicial officer.

[Part 97:108:1866; B § 2695; BH § 1732; C § 1878; RL § 2844; NCL § 4844]

**NRS 281.320 Withholding of settlement and payment of accounts of public officers.** Any officer charged with the disbursement of any public moneys or any evidence of public indebtedness, when informed by affidavit of the violation of any provisions of law by any officer whose account is to be settled, audited or paid by him, shall withhold any settlement or payment of the same and cause the officer to be prosecuted.

[Part 100:108:1866; B § 2698; BH § 1735; C § 1881; RL § 2847; NCL § 4847]

**NRS 281.330 Advocating overthrow of government cause for dismissal of public employee.** It shall be sufficient cause for the dismissal of any public employee when such public employee advocates or is a member of an organization which advocates overthrow of the Government of the United States or of the state by force, violence or other unlawful means.

[Part 1:20:1955]

WEST PUBLISHING CO.

Officers and Public Employees ⇐ 66.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 91, 119 to 126.

**NRS 281.340 Obtaining appointment by false letter or certificate: Penalty.** Every person who shall obtain appointment to any office or place of trust by color or aid of any false or forged letter or certificate of recommendation shall be guilty of a misdemeanor.

[Part 1911 C&P § 522; RL § 6787; NCL § 10468]

WEST PUBLISHING CO.

Officers and Public Employees ⇐ 121.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 255 to 289.

**NRS 281.350 Grafting by public officer or employee: Penalty.** Every public officer or public employee who shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon any agreement or understanding that he shall act in any particular manner in connection with his official duties or the public service; or who, being authorized to purchase or con-

tract for materials, supplies or other articles or to employ servants or labor for the state or any county or municipality, or for the public service, shall ask or receive, directly or indirectly, for himself or another, a commission, percentage, discount, bonus or promise thereof from any person with whom he may deal in relation to such matters, shall be guilty of a gross misdemeanor.

[Part 1911 C&P § 521; RL § 6786; NCL § 10467]—(NRS A 1963, 17)

WEST PUBLISHING CO.

Bribery ⇌ 1(1).

WESTLAW Topic No. 63.

C.J.S. Bribery §§ 1, 2.

**NRS 281.360 Failure by public officer or employee to perform duty: Penalty.** Whenever any duty is enjoined by law upon any public officer or other person holding any public trust or employment, their willful neglect to perform such duty, except where otherwise specifically provided for, shall be a misdemeanor.

[1911 C&P § 24; RL § 6289; NCL § 9973]

WEST PUBLISHING CO.

Officers and Public Employees ⇌ 121.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 255 to 259.

**NRS 281.370 Actions concerning personnel to be based on merit and fitness; discrimination prohibited.**

1. All personnel actions taken by state, county or municipal departments, housing authorities, agencies, boards or appointing officers thereof must be based solely on merit and fitness.

2. State, county or municipal departments, housing authorities, agencies, boards or appointing officers thereof shall not refuse to hire a person, discharge or bar any person from employment or discriminate against any person in compensation or in other terms or conditions of employment because of his race, creed, color, national origin, sex, age, political affiliation or disability, except when based upon a bona fide occupational qualification.

3. As used in this section, "disability" means, with respect to a person:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of the person;

(b) A record of such an impairment; or

(c) Being regarded as having such an impairment.

(Added to NRS by 1959, 137; A 1973, 980; 1985, 1561; 1987, 2266; 1991, 1021; 1995, 814)

WEST PUBLISHING CO.

Officers and Public Employees ⇌ 11.1 et seq.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 52, 55.

NEVADA CASES.

Statute invalidates school district regulation providing for compulsory retirement of certified employees at certain age. School district regulation providing for compulsory retirement of certified employees at certain age was invalid because in conflict with provisions of

NRS 281.370 which prohibits age discrimination in public employment. Clark County School Dist. v. Beebe, 91 Nev. 165, 533 P.2d 161 (1975)

Statute did not interfere with board of regents' essential management and control of university; regents' policy of faculty retirement at 70 was invalid. NRS 281.370, which prohibits all state departments, agencies and boards from discriminating against any person in employment because of age, did not interfere with board of regents' essential management and control of university pursuant to Nev. Art. 11, § 7, and regents' policy requiring member of faculty to

retire at end of contract year in which he reached age 70 was invalid because it violated provisions of statute. *Board of Regents v. Oakley*, 97 Nev. 605, 637 P.2d 1199 (1981)

**Section does not provide private right of action for employment discrimination.** No private right of action for employment discrimination is provided by NRS 281.370. *Palmer v. State*, 106 Nev. 151, 787 P.2d 803 (1990)

**NRS 281.375 Application for employment: Volunteer work must be considered.** Every application form for employment with the State of Nevada, any of its political subdivisions or any agency of the state must indicate that volunteer work relevant to the position applied for is considered in the evaluation of the applicant's qualifications for employment and must provide space for the applicant to list any volunteer work he considers appropriate.

(Added to NRS by 1981, 350)

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Officers and Public Employees ⇌ 8.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees § 36.

**NRS 281.380 Public officers and employees required to accept reproductions of business records for examination and other purposes.** If any business, institution or member of a profession or calling has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event and has caused any or all of such records to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, such reproduction shall be accepted by all public officers and employees for examination, filing, copying or any other purpose as if it were the original, whether or not the original is then in existence.

(Added to NRS by 1963, 523)

**NRS 281.390 Sick leave of public employees: Election of benefits; amount limited when eligible for benefits for industrial or occupational disease. [Effective until July 1, 1999.]**

1. When any public employee is eligible at the same time for benefits for temporary total disability under chapters 616A to 616D, inclusive, or 617 of NRS and for any sick leave benefit, he may, by giving notice to his employer, elect to continue to receive his normal salary instead of the benefits under those chapters until his accrued sick leave time is exhausted. The employer shall notify the state industrial insurance system of the election. The employer shall continue to pay the employee his normal salary but charge against the employee's accrued sick leave time as taken during the pay period an amount which represents the difference between his normal salary and the amount of any benefit for temporary total disability received, exclusive of reimbursement or payment of medical or hospital expenses under chapters 616A to 616D, inclusive, or 617 of NRS for that pay period.

2. When the employee's accrued sick leave time is exhausted, payment of his normal salary under subsection 1 must be discontinued and the employer shall promptly notify the state industrial insurance system so that it may begin paying the benefits to which the employee is entitled directly to the employee.

3. An employee who declines to make the election provided in subsection 1, may use all or part of the sick leave benefit normally payable to him while directly receiving benefits for temporary total disability under chapters 616A to 616D, inclusive, or 617 of NRS, but the amount of sick leave benefit paid to the employee

for any pay period must not exceed the difference between his normal salary and the amount of any benefit received, exclusive of reimbursement or payment of medical or hospital expenses under those chapters for that pay period.

4. If the amount of the employee's sick leave benefit is reduced pursuant to subsection 3 below the amount normally payable, the amount of sick leave time charged against the employee as taken during that pay period must be reduced in the same proportion.

5. The public employee may decline to use any or part of the sick leave benefit normally payable to him while receiving benefits under chapters 616A to 616D, inclusive, or 617 of NRS. During that period of time the employee shall be considered on leave of absence without pay.

(Added to NRS by 1969, 439; A 1975, 205; 1981, 497, 1538)

**NRS 281.390 Sick leave of public employees: Election of benefits; amount limited when eligible for benefits for industrial or occupational disease. [Effective July 1, 1999.]**

1. When any public employee is eligible at the same time for benefits for temporary total disability pursuant to chapters 616A to 616D, inclusive, or 617 of NRS and for any sick leave benefit, he may, by giving notice to his employer, elect to continue to receive his normal salary instead of the benefits pursuant to those chapters until his accrued sick leave time is exhausted. The employer shall notify the state industrial insurance system or the insurer that provides industrial insurance for that employer of the election. The employer shall continue to pay the employee his normal salary but charge against the employee's accrued sick leave time as taken during the pay period an amount which represents the difference between his normal salary and the amount of any benefit for temporary total disability received, exclusive of reimbursement or payment of medical or hospital expenses pursuant to chapters 616A to 616D, inclusive, or 617 of NRS for that pay period.

2. When the employee's accrued sick leave time is exhausted, payment of his normal salary pursuant to subsection 1 must be discontinued and the employer shall promptly notify the state industrial insurance system or the insurer that provides industrial insurance for that employer so that it may begin paying the benefits to which the employee is entitled directly to the employee.

3. An employee who declines to make the election provided in subsection 1, may use all or part of the sick leave benefit normally payable to him while directly receiving benefits for temporary total disability pursuant to chapters 616A to 616D, inclusive, or 617 of NRS, but the amount of sick leave benefit paid to the employee for any pay period must not exceed the difference between his normal salary and the amount of any benefit received, exclusive of reimbursement or payment of medical or hospital expenses pursuant to those chapters for that pay period.

4. If the amount of the employee's sick leave benefit is reduced pursuant to subsection 3 below the amount normally payable, the amount of sick leave time charged against the employee as taken during that pay period must be reduced in the same proportion.

5. The public employee may decline to use any or part of the sick leave benefit normally payable to him while receiving benefits pursuant to chapters 616A to 616D, inclusive, or 617 of NRS. During that period of time the employee shall be considered on leave of absence without pay.

(Added to NRS by 1969, 439; A 1975, 205; 1981, 497, 1538; 1995, 2042, effective July 1, 1999)

## GENERAL PROVISIONS

281.405

**NRS 281.400 Coercion respecting membership in organizations of aged, blind or disabled prohibited.** No officer or employee of the state or any county, city or district who is concerned with the administration of any program for the aged, blind or disabled shall, in his official capacity, attempt to coerce or coerce any aged, blind or disabled person to join or refrain from joining any organization of the aged, blind or disabled.

(Added to NRS by 1971, 174)

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Officers and Public Employees ⇐ 27.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 15, 16, 34, 35.

**NRS 281.405 Lien against public officer or employee: Validity; "lien" defined.**

1. Any lien which is filed or otherwise claimed against a public officer or employee which is based on the performance of or failure to perform a duty relating to his office or employment is invalid unless the filing of the lien is authorized by a specific statute or by an order of a court of competent jurisdiction.

2. As used in this section, "lien" means an encumbrance on property which is used as security for the payment of a debt.

(Added to NRS by 1997, 72)

## ETHICS IN GOVERNMENT

## NEVADA CASES.

**Statute not ex post facto.** Nevada Ethics in Government Law (cf. NRS 281.411 et seq.) was not ex post facto law prohibited by Nev. Art. 1, § 15, because it was prospective, not retrospective in operation. *Dunphy v. Sheehan*, 92 Nev. 259, 549 P.2d 332 (1976)

**Exclusion of judiciary from statute required by doctrine of separation of powers.** Exclusion of members of judiciary from provisions of Nevada Ethics in Government Law (cf. NRS 281.411 et seq.) was required by doctrine of separation of powers because promulgation of code of judicial ethics is essential to due administration of justice and is within inherent power of judicial department. *Dunphy v. Sheehan*, 92 Nev. 259, 549 P.2d 332 (1976), cited, *City of N. Las Vegas ex rel. Arndt v. Daines*, 92 Nev. 292, at 294, 550 P.2d 399 (1976), *Nevada Indus. Comm'n v. Reese*, 93 Nev. 115, at 129, 560 P.2d 1352 (1977), dissenting opinion, *Goldberg v. Eighth Judicial Dist. Court*, 93 Nev. 614, at 616, 572 P.2d 521 (1977), *Whitehead v. Commission on Judicial Discipline*, 110 Nev. 874, at 880, 878 P.2d 913 (1994), AGO 94-24 (11-30-1994)

**Supreme court may conduct de novo review of commission on ethics' construction of Nevada Ethics in Government Law; district court is obligated to give deference to construction afforded by commission.** Although supreme court may conduct de novo review of commission on ethics' construction of Nevada Ethics in Government Law (see NRS 281.411 et seq.), district court is obligated to give deference to construction afforded by commission. (See also NRS 281.511.) *Nevada Comm'n on Ethics v. JMA/Lucchesi*, 110 Nev. 1, 866 P.2d 297 (1994)

## ATTORNEY GENERAL'S OPINIONS.

**"Public officer" defined.** For purposes of Nevada Ethics in Government Law (see NRS 281.411 et seq.) term "public officer" includes (1) elective officers and (2) persons appointed to positions created by law whose duties are specifically set forth in law and who are made responsible, by law, for direction, supervision and control of their agencies, including part-time officers and those who serve without compensation. Term does not include persons in positions created by U.S. Constitution, persons in judicial department of state, members of committees, commissions or boards which are solely advisory in nature, notaries public and commissioners of deeds, deputies and assistants to public officers. AGO 193 (9-3-1975), cited, AGO 86-6 (5-12-1986), AGO 96-15 (5-28-1996), AGO 96-33 (11-8-1996)

## GENERAL PROVISIONS

**NRS 281.411 Short title.** NRS 281.411 to 281.581, inclusive, may be cited as the Nevada Ethics in Government Law.

(Added to NRS by 1977, 1103; A 1995, 2443)

**NRS 281.421 Legislative declaration and findings.**

1. It is hereby declared to be the public policy of this state that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself to avoid conflicts between his private interests and those of the general public whom he serves.

2. The legislature finds that:

(a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.

(b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

(Added to NRS by 1977, 1103)

## NEVADA CASES.

**Effect of section on contracting by public employees.** Provisions of NRS 281.421 reflect legislative intent to prevent public employees from entering into any contract which would present conflict between employee's private interests and those of general public, not just those contracts involving offers based on price. Therefore, design proposals for architectural school building sub-

mitted by faculty member of University and Community College System of Nevada were bids within meaning of former provisions of NRS 281.481 (cf. NRS 281.505) even though proposals did not specify price. Key element of term "bid" is not price, but competitive offer to contract. Nevada Comm'n on Ethics v. JMA/Lucchesi, 110 Nev. 1, 866 P.2d 297 (1994)

**NRS 281.431 Definitions.** As used in NRS 281.411 to 281.581, inclusive, unless the context otherwise requires, the words and terms defined in NRS 281.432 to 281.4365, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1977, 1103; A 1985, 1216, 2122; 1987, 385; 1991, 1594; 1997, 256)

**NRS 281.432 "Business entity" defined.** "Business entity" means any proprietorship, partnership, corporation or other enterprise doing business in the State of Nevada.

(Added to NRS by 1985, 2120)

**NRS 281.4323 "Candidate" defined.** "Candidate" means any person:

1. Who files a declaration of candidacy;

2. Who files an acceptance of candidacy; or

3. Whose name appears on an official ballot at any election,

for election to any public office, including the office of justice of the supreme court, district judge, justice of the peace and municipal judge.

(Added to NRS by 1991, 1591; A 1993, 265)

**NRS 281.4325 "Commission" defined.** "Commission" means the commission on ethics.

(Added to NRS by 1985, 2120)

## GENERAL PROVISIONS

281.4365

**NRS 281.4327 “Compensation” defined.** “Compensation” means any money, thing of value or economic benefit conferred on or received by any person in return for services rendered, personally or by another.

(Added to NRS by 1991, 1591)

**NRS 281.433 “Decision” defined.** The making of a “decision” is the exercise of governmental power to adopt laws, regulations or standards, render quasi-judicial decisions, establish executive policy or determine questions involving substantial discretion. The term does not include the functions of the judiciary.

(Added to NRS by 1985, 2121)

**NRS 281.434 “Household” defined.** “Household” means an association of persons who live in the same home or dwelling, sharing its expenses, and who are related by blood, adoption or marriage.

(Added to NRS by 1985, 2121)

**NRS 281.4345 “Legislative function” defined.** “Legislative function” means introducing or voting upon any ordinance or resolution, or voting upon:

1. The appropriation of public money;
2. The issuance of a license or permit; or
3. Any proposed subdivision of land or special exception or variance from zoning regulations.

(Added to NRS by 1985, 2121)

**NRS 281.435 “Member of the executive branch” defined.** “Member of the executive branch” means any public officer who is not a member of the legislative branch.

(Added to NRS by 1985, 2121)

**NRS 281.4355 “Member of the legislative branch” defined.** “Member of the legislative branch” means any member of the legislature or any member of a board of county commissioners or governing body of a city or other political subdivision who performs a legislative function.

(Added to NRS by 1985, 2121)

**NRS 281.436 “Public employee” defined.** “Public employee” means any person who performs public duties under the direction and control of a public officer for compensation paid by the state, a county or an incorporated city.

(Added to NRS by 1985, 2121)

**NRS 281.4365 “Public officer” defined.**

1. “Public officer” means a person elected or appointed to a position which is established by the constitution of the State of Nevada, a statute of this state or an ordinance of any of its counties or incorporated cities and which involves the exercise of a public power, trust or duty. As used in this section, “the exercise of a public power, trust or duty” includes:

- (a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;
- (b) The expenditure of public money; and
- (c) The enforcement of laws and rules of the state, a county or a city.

2. “Public officer” does not include:

- (a) Any justice, judge or other officer of the court system;

**281.455****GENERAL PROVISIONS**

- (b) A commissioner of deeds;
  - (c) Any member of a board, commission or other body whose function is advisory; or
  - (d) Any member of a board of trustees for a general improvement district or special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money.
- (Added to NRS by 1985, 2121; A 1987, 2093)

**ATTORNEY GENERAL'S OPINIONS.**

**County library trustee required to file statement of financial disclosure.** County library trustee is public officer within meaning of NRS 281.4365 and is, therefore, required to file statement of financial disclosure pursuant to NRS 281.561. AGO 86-6 (5-12-1986)

**County engineer is "public officer."** County engineer is public officer within meaning of NRS 281.4365. AGO 89-14 (9-26-1989)

**County employee designated by county manager as head of department or staff director is not "public officer."** Because county employee designated by county manager as head of department or staff director serves at will of county manager and board of county commissioners such employee is not public officer within meaning of NRS 281.4365 and, therefore, is not

required to file statement of financial disclosure pursuant to NRS 281.561. AGO 96-15 (5-28-1996), cited, AGO 96-33 (11-8-1996)

**City manager is "public officer."** City manager is public officer within meaning of NRS 281.4365 because office is established by ordinance of political subdivision of state and involves continuous exercise of public power, trust or duty. City manager, therefore, is required to file statement of financial disclosure pursuant to NRS 281.561. AGO 96-33 (11-8-1996)

**Officers appointed by city manager are not "public officers."** Officers appointed by city manager are not public officers within meaning of NRS 281.4365 because their duties are delegated to them by higher authorities. Such officers, therefore, are not required to file statements of financial disclosure pursuant to NRS 281.561. AGO 96-33 (11-8-1996)

**COMMISSION ON ETHICS****NRS 281.455 Creation; appointment, terms and qualifications of members; prohibited activities by members; vacancies.**

1. The commission on ethics, consisting of six members, is hereby created.
2. The legislative commission shall appoint to the commission:
  - (a) One former legislator;
  - (b) One former public officer of a county; and
  - (c) One former public officer of a city.
3. The governor shall appoint to the commission three residents of the state, one of whom must be, if available and willing to serve, a retired justice or judge of this state who was not removed or retired from that office for cause.
4. Not more than three members of the commission may be members of the same political party. Not more than three members may be residents of the same county.
5. None of the members of the commission may:
  - (a) Hold another public office;
  - (b) Be actively involved in the work of any political party or political campaign; or
  - (c) Appear in person and communicate directly with a member of the legislative branch on behalf of someone other than himself, for compensation, to influence legislative action, while he is serving on the commission.



**GENERAL PROVISIONS****281.461**

6. After the initial terms, the members shall serve terms of 4 years. Any vacancy in the membership must be filled by the appropriate appointing authority for the unexpired term. Each member may serve no more than two consecutive full terms.

(Added to NRS by 1985, 2121; A 1991, 1594)

**NRS 281.461 Chairman; meetings; compensation; employees and facilities.**

1. The commission shall:

(a) At its first meeting and annually thereafter elect a chairman and vice chairman from among its members.

(b) Meet regularly at least once in each calendar quarter, unless there are no requests made for an opinion pursuant to NRS 281.511, 294A.345 or 294A.346, and at other times upon the call of the chairman.

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## GENERAL PROVISIONS

281.471

2. Members of the commission are entitled to receive a salary of not more than \$80 per day, as fixed by the commission, while engaged in the business of the commission.

3. While engaged in the business of the commission, each member and employee of the commission is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

4. The commission shall, within the limits of legislative appropriation, employ such persons as are necessary to carry out any of its duties relating to:

- (a) The administration of its affairs;
- (b) The review of statements of financial disclosure; and
- (c) The investigation of matters under its jurisdiction.

5. The commission may, within the limits of legislative appropriation, maintain such facilities as are required to carry out its functions.

(Added to NRS by 1977, 1105; A 1981, 1979; 1983, 1440; 1985, 391, 2123; 1987, 2094; 1989, 1709; 1991, 1594; 1997, 256)

**ADMINISTRATIVE REGULATIONS.**

Commission on ethics, NAC 281.015-281.185

**NRS 281.465 Jurisdiction.**

1. The commission has jurisdiction to investigate and take appropriate action regarding an alleged violation of:

(a) This chapter by a public officer or employee or former public officer or employee in any proceeding commenced by:

- (1) The filing of a request for an opinion with the commission; or
- (2) A determination of the commission on its own motion that there is just and sufficient cause to render an opinion concerning the conduct of that public officer or employee or former public officer or employee.

(b) NRS 294A.345 or 294A.346 in any proceeding commenced by the filing of a request for an opinion pursuant thereto.

2. The provisions of paragraph (a) of subsection 1 apply to a public officer or employee who:

(a) Currently holds public office or is publicly employed at the commencement of proceedings against him.

(b) Resigns or otherwise leaves his public office or employment:

- (1) After the commencement of proceedings against him; or
- (2) Within 1 year after the alleged violation or reasonable discovery of the alleged violation.

(Added to NRS by 1995, 2443; A 1997, 256)

**NRS 281.471 Duties.** The commission shall:

1. Adopt procedural regulations to facilitate the receipt of inquiries and prompt rendition of its opinions.

2. Prescribe, by regulation, forms and procedures for the submission of statements of financial disclosure, maintain files of the statements and make the statements available for public inspection.

3. Make such investigations as are reasonable and necessary for the rendition of its opinions pursuant to this chapter.

4. Inform the attorney general or district attorney of all cases of noncompliance with the requirements for disclosure.

5. Recommend to the legislature such further legislation as the commission considers desirable or necessary to promote and maintain high standards of ethical conduct in government.

(Added to NRS by 1977, 1105; A 1985, 2124; 1991, 1595)

#### ADMINISTRATIVE REGULATIONS.

Commission on ethics, NAC 281.015-281.185

#### **NRS 281.475 Oaths; subpoenas.**

1. The chairman and vice chairman of the commission may administer oaths.

2. The commission, upon majority vote, may issue a subpoena to compel the attendance of a witness and the production of books and papers. Before issuing such a subpoena, the commission shall submit a written request to the public officer or public employee who is the subject of an inquiry or opinion of the commission, or to the person or group of persons requesting an opinion pursuant to NRS 294A.345 or 294A.346, requesting:

(a) His appearance, or the appearance of a representative of the group, as a witness;

(b) The appearance as a witness of any other person who may have information relating to the inquiry or opinion; or

(c) The production of any books and papers.

Each such request must specify the time and place for the attendance of any witness or the production of any books and papers, and designate with certainty the books and papers requested, if any. If the public officer or other witness fails or refuses to attend or produce the books and papers requested by the commission, the commission may issue the subpoena.

3. If any witness refuses to attend, testify or produce any books and papers as required by the subpoena, the chairman of the commission may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) The witness has been subpoenaed by the commission pursuant to this section; and

(c) The witness has failed or refused to attend or produce the books and papers required by the subpoena before the commission, or has refused to answer questions propounded to him, and asking for an order of the court compelling the witness to attend and testify or produce the books and papers before the commission.

4. Except as otherwise provided in this subsection, upon such a petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and then and there show cause why he has not attended, testified or produced the books or papers before the commission. If the witness has been subpoenaed by the commission in response to a request for an opinion filed pursuant to NRS 294A.345 or 294A.346, the court shall direct the witness to appear before the court as expeditiously as possible to allow the commission to render its opinion within the time required by NRS 281.477. A certified copy of the order must be served upon the witness.

5. If it appears to the court that the subpoena was regularly issued by the commission, the court shall enter an order that the witness appear before the commission, at the time and place fixed in the order, and testify or produce the required books and papers. Upon failure to obey the order the witness must be dealt with as for contempt of court.

(Added to NRS by 1991, 1591; A 1997, 257)

**NRS 281.477 Public hearing on request for opinion as to whether person committed act to impede success of political campaign: Request; notice; response; continuance; actions of commission; judicial review of final opinion.**

1. If a request for an opinion is filed with the commission pursuant to NRS 294A.345 or 294A.346, the commission shall conduct a public hearing on the request. Except as otherwise provided in subsection 6, the hearing must be held as expeditiously as possible, but not later than 15 days after the receipt of the request for the opinion.

2. Such a request must be accompanied by all evidence and arguments to be offered by the requester concerning the issues related to the request. Except as otherwise provided in this subsection, if such evidence and arguments are not submitted with the request, the commission may:

(a) Draw any conclusions it deems appropriate from the failure of the person or group of persons requesting the opinion to submit the evidence and arguments, other than a conclusion that a person alleged to have violated NRS 294A.345 acted with actual malice; and

(b) Decline to render an opinion.

The provisions of this subsection do not prohibit the commission from considering evidence or arguments presented by the requester after submission of the request for an opinion if the commission determines that consideration of such evidence or arguments is in the interest of justice.

3. The commission shall immediately notify any person alleged to have violated NRS 294A.345 or 294A.346 that such an opinion has been requested by the most expedient means possible. If notice is given orally by telephone or in any other manner, a second notice must be given in writing no later than the next calendar day by facsimile machine or overnight mail. The notice must include the time and place of the commission's hearing on the matter.

4. A person notified pursuant to subsection 3 shall submit a response to the commission no later than at the close of business on the second business day following the receipt of the notice. The response must be accompanied by any evidence concerning the issues related to the request that the person has in his possession or may obtain without undue financial hardship. Except as otherwise provided in this subsection, if such evidence is not submitted within that time, the commission may:

(a) Draw any conclusions it deems appropriate from the failure of that person to submit the evidence and argument; and

(b) Prohibit that person from responding and presenting evidence at the hearing.

The provisions of this subsection do not prohibit the commission from allowing that person to respond and present evidence or arguments, or both, after the close of business on the second business day if the commission determines that consideration of such evidence or arguments is in the interest of justice.

5. Except as otherwise provided in subsection 4, the commission shall allow any person alleged to have violated NRS 294A.345 or 294A.346 to:

(a) Be represented by counsel; and

(b) Hear the evidence presented to the commission and respond and present evidence on his own behalf.

6. At the request of:

(a) The person or group of persons that filed the request for the opinion pursuant to NRS 294A.345 or 294A.346; or

(b) The person alleged to have violated the provisions of NRS 294A.345 or 294A.346,

the commission may grant a continuance of a hearing held pursuant to the provisions of this section upon a showing of the existence of extraordinary circumstances that would prohibit the commission from rendering a fair and impartial opinion. A continuance may be granted for not more than 15 days. Not more than one continuance may be granted by the commission pursuant to this subsection.

7. The person or group of persons that filed the request for the opinion pursuant to NRS 294A.345 or 294A.346 has the burden of proving the elements of the offense, including that a person alleged to have violated NRS 294A.345 acted with actual malice. The existence of actual malice may not be presumed. A final opinion of the commission rendered pursuant to this section must be supported by clear and convincing evidence.

8. The commission shall render its opinion, or decline to render an opinion, as expeditiously as possible, but not later than 3 days after the date of the hearing. If additional time is required to determine the state of mind or the intent of the person alleged to have violated the provisions of NRS 294A.345 or 294A.346 or to determine the amount of any civil penalty that may be imposed pursuant to NRS 281.551, the commission may continue its jurisdiction to investigate those issues but shall render its opinion as to the truth or falsity of the statement made concerning the candidate or the ballot question or its opinion as to whether the person impeded the success of the campaign or induced another person to impede the success of the campaign. If the commission continues its jurisdiction pursuant to this subsection, it may render a final opinion after the time set forth in this subsection.

9. A final opinion of the commission rendered pursuant to this section is subject to judicial review pursuant to NRS 233B.130. The district court shall give a petition for judicial review of a final opinion of the commission priority over other civil matters that are not expressly given priority by law. Notwithstanding the provisions of NRS 233B.130, the court may provide for such expedited review of the final opinion, including shortened periods for filing documents, as it deems appropriate for the circumstances.

10. Each request for an opinion filed pursuant to NRS 294A.345 or 294A.346, each opinion rendered by the commission pursuant thereto and any motion, evidence or record of a hearing relating to the request are public and must be open to inspection pursuant to NRS 239.010.

11. For the purposes of NRS 41.032, the members of the commission and its employees shall be deemed to be exercising or performing a discretionary function or duty when taking any action related to the rendering of an opinion pursuant to this section.

12. Except as otherwise provided in this section, a meeting or hearing held by the commission to carry out the provisions of this section and the commission's deliberations on the information or evidence are not subject to any provision of chapter 241 of NRS.

(Added to NRS by 1997, 254)

## GENERAL PROVISIONS

281.481

## CODE OF ETHICAL STANDARDS

**NRS 281.481 General requirements; exceptions.** A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any member of his household, any business entity in which he has a significant pecuniary interest, or any other person.

3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any private business in which he has a significant pecuniary interest.

4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.

5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

6. A public officer or employee shall not suppress any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.

7. A public officer or employee, other than a member of the legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

8. A member of the legislature shall not:

(a) Use governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of himself or any other person. This paragraph does not prohibit:

(1) A limited use of state property and resources for personal purposes if:

(I) The use does not interfere with the performance of his public duties;

(II) The cost or value related to the use is nominal; and

(III) The use does not create the appearance of impropriety;

(2) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(3) The use of telephones or other means of communication if there is not a special charge for that use.

(b) Require or authorize a legislative employee, while on duty, to perform personal services or assist in a private activity, except:

(1) In unusual and infrequent situations where the employee's service is reasonably necessary to permit the legislator or legislative employee to perform his official duties; or

(2) Where such service has otherwise been established as legislative policy.

9. A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.

10. A public officer or employee shall not seek other employment or contracts through the use of his official position.

(Added to NRS by 1977, 1105; A 1987, 2094; 1991, 1595; 1993, 2243; 1997, 3324)

#### WEST PUBLISHING CO.

Officers and Public Employees ⇌ 110.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 197 to 204.

#### NEVADA CASES.

**Provisions of section are mandatory.** Amendment of NRS 281.481 in 1991 to state that code of ethical standards was established to "govern" rather than "guide" conduct of public officers and employees showed clear legislative intent to make amended section mandatory. Thus, provisions of section are mandatory rather than directory and permissive. Nevada Comm'n on Ethics v. JMA/Lucchesi, 110 Nev. 1, 866 P.2d 297 (1994)

#### ATTORNEY GENERAL'S OPINIONS.

**Rental of specialized equipment from employee by department of transportation did not violate statute.** Rental by department of highways (now department of transportation) of specialized equipment from employee, where no extra compensation would be paid for personal services of employee and rental rate would be less than for similar equipment obtained elsewhere, would not violate former NRS 408.890 (cf. NRS 408.353), which prohibits such employees from having interest in highway contracts, or former provisions of NRS 281.230 (cf. NRS 281.481), which prohibits state employees from receiving compensation inconsistent with loyal service to people of state. AGO 366 (12-12-1966)

**Justice of the peace prohibited from selling insurance to county on commission basis.** Nev. Art. 6, § 1, relating to judicial power of state, and Nev. Art. 6, § 8, which provides for justices of peace, constitute public or state officers who would be prohibited under former NRS 269.050 (cf. NRS 269.072), relating to contracts of town officers in discharge of official duties, and former provisions of NRS 281.230 (cf. NRS 281.481),

relating to contracts of state or township officers being compensated in manner inconsistent with loyal service, from selling insurance to county on commission basis. AGO 379 (1-31-1967)

**Manager of Las Vegas Valley Water District prohibited from serving as counsel to Colorado River commission at same time.** Person is prohibited by former provisions of NRS 281.230 (cf. NRS 281.481) from serving as manager of Las Vegas Valley Water District and at same time serving under contract as counsel to Colorado River commission because conflict of interest may arise from fact that district and commission are involved in contractual relations with each other. Fact that one so appointed agrees to withdraw advice if conflict should arise does not alter statutory prohibition. AGO 503 (4-24-1968)

**Neither statute nor common law violated when state officer held minimal interest in corporation which contracted with state but did not participate in or directly benefit from transaction.** Where state officer held minimal interest in private corporation that contracted with state but did not participate in or directly benefit from transaction, he did not violate provisions of former NRS 281.220 or former provisions of 281.230 (cf. NRS 281.481), prohibiting conflicts of interest by state and other public officers, or any common law prohibition. AGO 16 (3-2-1971)

**County employees who are not county officers may serve as trustees for county school district.** County employees who are not county officers may serve as trustees for county school district because former provisions of NRS 281.230 (cf. NRS 281.481) do not prohibit such service since it is not inconsistent with loyal service to people, and NRS 281.127, limiting salaries of public officers and employees, is applicable only to services rendered to state. AGO 22 (5-20-1971)

## GENERAL PROVISIONS

281.501

School teacher may serve as justice of peace as long as neither position interferes with duties of other. Under former provisions of NRS 281.230 (cf. NRS 281.481), prohibiting public officer or employee from other employment inconsistent with loyal service to people, school teacher may also serve as justice of peace as long as neither position interferes with duties required of other. AGO 50 (10-26-1971)

County engineer may not represent private clients before county planning commission of employer county. Under former provisions of NRS 281.230 (cf. NRS 281.481), prohibiting conflicts of interest in public employment, county engineer may not represent private clients before county planning commission of employer county. AGO 94 (8-21-1972), cited, AGO 89-14 (9-26-1989)

**NRS 281.491 Additional standards: Representation and counseling of private person before public agency; disclosure required.** In addition to the requirements of the code of ethical standards:

1. A member of the executive branch or public employee of the executive branch shall not accept compensation from any private person to represent or counsel him on any issue pending before the agency in which that officer or employee serves, if the agency makes decisions. Any such officer or employee who leaves the service of the agency shall not, for 1 year after leaving the service of the agency, represent or counsel for compensation a private person upon any issue which was under consideration by the agency during his service. As used in this subsection, "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.

2. A member of the legislative branch, or a member of the executive branch or public employee whose public service requires less than half of his time, may represent or counsel a private person before an agency in which he does not serve. Any other member of the executive branch or public employee shall not represent a client for compensation before any state agency of the executive or legislative branch of government.

3. Not later than January 10 of each year, any legislator or other public officer who has, within the preceding year, represented or counseled a private person for compensation before a state agency of the executive branch shall disclose for each such representation or counseling during the previous calendar year:

- (a) The name of the client;
- (b) The nature of the representation; and
- (c) The name of the state agency.

The disclosure must be made in writing and filed with the commission.

(Added to NRS by 1977, 1106; A 1991, 1597)

**ATTORNEY GENERAL'S OPINIONS.**

County engineer violates ethical standards if he represents private clients before county commission or regional planning commission.

County engineer violates ethical standards set forth in NRS 281.491 if he represents private clients before county commission or regional planning commission. AGO 89-14 (9-26-1989)

**NRS 281.501 Additional standards: Voting by members of legislative branch and other public officers or employees; effect of abstention from voting on quorum; required disclosures.**

1. Except as otherwise provided in subsection 2 or 3, a member of the legislative branch may vote upon a matter if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a general business, profession, occupation or group is not greater than that accruing to any other member of the general business, profession, occupation or group.



**281.501****GENERAL PROVISIONS**

2. In addition to the requirements of the code of ethical standards, a member of the legislative branch shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group.

3. A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

- (a) Regarding which he has accepted a gift or loan;
- (b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest, without disclosing the full nature and extent of the gift, loan, commitment or interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected.

4. If a member of the legislative branch declares to the legislative body or committee in which the vote is to be taken that he will abstain from voting because of the requirements of this section, the necessary quorum to act upon and the number of votes necessary to act upon the matter, as fixed by any statute, ordinance or rule, is reduced as though the member abstaining were not a member of the body or committee.

5. If a member of the legislative branch is voting on a matter which affects public employees, he shall make a full public disclosure of any personal pecuniary interest which he may have in the matter.

6. After a member of the legislative branch makes a disclosure pursuant to subsection 3, he may file with the director of the legislative counsel bureau a written statement of his disclosure. The written statement must designate the matter to which the disclosure applies. After a legislator files a written statement pursuant to this subsection, he is not required to disclose orally his interest when the matter is further considered by the legislature or any committee thereof. A written statement of disclosure is a public record and must be made available for inspection by the public during the regular office hours of the legislative counsel bureau.

(Added to NRS by 1977, 1106; A 1987, 2095; 1991, 1597; 1995, 1083; 1997, 3326)

## GENERAL PROVISIONS

281.511

**NRS 281.505 Contracts in which public officer or employee has interest prohibited; exceptions.**

1. Except as otherwise provided in this section, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any private business in which he has a significant pecuniary interest.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by such board or commission, may, in the ordinary course of his business, bid on or enter into a contract with any governmental agency, except the board, commission or body of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member in the University and Community College System of Nevada may bid on or enter into a contract with a governmental agency if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

4. A public officer or employee, other than an officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

(Added to NRS by 1993, 2241; A 1995, 689)

**NEVADA CASES.**

**Design proposals for university building by faculty member of university were bids under circumstances.** Provisions of NRS 281.421 reflect legislative intent to prevent public employees from entering into any contract which would present conflict between employee's private interests and those of general public, not just those contracts involving offers based on price. Therefore, design proposals for architectural school building submitted by faculty member of University and Community College System of Nevada were bids within meaning of former provisions of NRS 281.481 (cf. NRS 281.505) even though proposals did not specify price. Key element of term "bid" is not price, but competitive offer to contract. Nevada Comm'n on Ethics v. JMA/Lucchesi, 110 Nev. 1, 866 P.2d 297 (1994)

**Faculty member of university was prohibited from submitting design proposals for university building.** Former provisions of NRS 281.481 (cf. NRS 281.505), which prohibit public employees from bidding on contract with state if they have participated in preparing designs or

specifications for that contract, became mandatory on October 1, 1991, and were applicable to actions of faculty member of University and Community College System of Nevada where faculty member, before such provisions became mandatory, had been member of design committee formed for purpose of developing design for university building and where faculty member had decided to enter design competition and had formed joint venture for that purpose 1 month before design competition was publicly announced. Although such misconduct by faculty member began before provisions became mandatory, faculty member, by submitting design proposals after October 1, 1991, engaged in prohibited acts after provisions became mandatory. Furthermore, actual design competition was not held until after provisions became mandatory. Thus, supreme court held that submission of entry combined with judging process was sufficient to sustain commission on ethics' decision that faculty member was prohibited from entering into contract with university to design building. Nevada Comm'n on Ethics v. JMA/Lucchesi, 110 Nev. 1, 866 P.2d 297 (1994)

**NRS 281.511 Commission to hold public hearings, render advisory opinions and publish abstracts; confidentiality; notice and hearing.**

1. The commission shall render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances upon request from a public officer or employee who is seeking guidance on questions which directly relate to the propriety of his own past, present or future conduct as an officer or employee. He may also request the commission to hold a public

**281.511****GENERAL PROVISIONS**

hearing regarding the requested opinion. If a requested opinion relates to the propriety of his own present or future conduct, the opinion of the commission is:

- (a) Binding upon the requester as to his future conduct; and
- (b) Final and subject to judicial review pursuant to NRS 233B.130, except that a proceeding regarding this review must be held in closed court without admittance of persons other than those necessary to the proceeding, unless this right to confidential proceedings is waived by the requester.

2. The commission may render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances:

- (a) Upon request from a specialized or local ethics committee.
- (b) Upon request from a person, if the requester:
  - (1) Submits all related evidence deemed necessary by the commission for it to make a preliminary determination of whether there is just and sufficient cause to render an opinion in the matter; and
  - (2) Signs a statement on a form prescribed by the commission in which he affirms that:

- (I) The accusation or information contained in the request is true;
- (II) He did not submit the request in bad faith or with a vexatious purpose; and

(III) He understands that the commission may impose penalties upon him pursuant to NRS 281.551 if the commission determines that the accusation or information is false and was submitted in bad faith, with a vexatious purpose or in connection with a request for an opinion that the commission determines to be without merit.

(c) Upon the commission's own motion regarding the propriety of conduct by a public officer or employee, if the commission first determines in an adopted motion that there is just and sufficient cause to render an opinion concerning the conduct of that public officer or employee. The commission shall not initiate proceedings pursuant to this paragraph based solely upon an anonymous complaint. Proceedings that the commission initiates pursuant to this paragraph must remain confidential unless the commission determines that there is just and sufficient cause to render an opinion.

The commission shall not determine that there is just and sufficient cause to render an opinion without extending the public officer or employee an opportunity to appear before the commission and present evidence and argument.

3. The commission shall render an opinion requested pursuant to this section as expeditiously as possible in light of the circumstances of the public officer or employee about whom the opinion is requested, so as to minimize adverse consequences to him that may result from a delay in issuing the opinion.

4. Each request for an opinion that a public officer or employee submits to the commission pursuant to subsection 1, each opinion rendered by the commission in response to such a request and any motion, preliminary determination, evidence or record of a hearing relating to such a request are confidential unless the public officer or employee who requested the opinion:

(a) Acts in contravention of the opinion, in which case the commission may disclose the request for the opinion, the contents of the opinion and any motion, evidence or record of a hearing related thereto;

(b) Discloses the request for the opinion, the contents of the opinion or any motion, evidence or record of a hearing related thereto; or

(c) Requests the commission to disclose the request for the opinion, the contents of the opinion or any motion, evidence or record of a hearing related thereto.

5. Except as otherwise provided in this subsection, each document in the possession of the commission that is related to a request for an opinion regarding a public officer or employee submitted to the commission pursuant to paragraph (b) of subsection 2, including the commission's copy of the request and all materials and information gathered in an investigation of the request, is confidential until the commission determines whether there is just and sufficient cause to render an opinion in the matter. The public officer or employee who is the subject of a request for an opinion submitted pursuant to paragraph (b) of subsection 2 may in writing authorize the commission to make its files, material and information which are related to the request publicly available.

6. Whenever the commission holds a hearing for a purpose other than to determine whether there is just and sufficient cause to render an opinion in a matter, the commission shall:

(a) Notify the person about whom the opinion was requested of the place and time of the commission's hearing on the matter;

(b) Allow the person to be represented by counsel; and

(c) Allow the person to hear the evidence presented to the commission and to respond and present evidence on his own behalf.

The commission's hearing may be held no sooner than 2 weeks after the notice is given unless the person agrees to a shorter time.

7. If a person who requests an opinion pursuant to subsection 1 or 2 does not:

(a) Submit all necessary information to the commission; and

(b) Declare by oath or affirmation that he will testify truthfully, the commission may decline to render an opinion.

8. For the purposes of NRS 41.032, the members of the commission and its employees shall be deemed to be exercising or performing a discretionary function or duty when taking an action related to the rendering of an opinion pursuant to this section.

9. The commission shall publish hypothetical opinions which are abstracted from the opinions rendered pursuant to subsection 1, for the future guidance of all persons concerned with ethical standards in government.

10. A meeting or hearing that the commission holds to receive information or evidence concerning the propriety of the conduct of a public officer or employee pursuant to this section and the commission's deliberations on such information or evidence are not subject to the provisions of chapter 241 of NRS.

(Added to NRS by 1977, 1107; A 1985, 2124; 1987, 2095; 1991, 1598; 1995, 2443; 1997, 3327)

#### ADMINISTRATIVE REGULATIONS.

Commission on ethics, NAC 281.015-281.185

#### NEVADA CASES.

Supreme court may conduct de novo review of commission on ethics' construction of Nevada Ethics in Government Law; district court is obligated to give deference to construc-

tion afforded by commission. Although supreme court may conduct de novo review of commission on ethics' construction of Nevada Ethics in Government Law (see NRS 281.411 et seq.), district court is obligated to give deference to construction afforded by commission. (See also NRS 281.511.) Nevada Comm'n on Ethics v. JMA/Lucchesi, 110 Nev. 1, 866 P.2d 297 (1994)

### **NRS 281.521 Questions which advisory opinions may address; guidance on campaign practices prohibited.**

1. The commission's opinions may include guidance to a public officer or employee on questions whether:

(a) A conflict exists between his personal interest and his official duty.

(b) His official duties involve the use of discretionary judgment whose exercise in the particular matter would have a significant effect upon the disposition of the matter.

(c) The conflict would materially affect the independence of the judgment of a reasonable person in his situation.

(d) He possesses special knowledge which is an indispensable asset of his public agency and is needed by it to reach a sound decision.

(e) It would be appropriate for him to withdraw or abstain from participation, disclose the nature of his conflicting personal interest or pursue some other designated course of action in the matter.

2. Except as otherwise provided in NRS 281.477, 294A.345 and 294A.346, the commission's opinions may not include guidance to a public officer or employee on questions regarding the provisions of chapter 294A of NRS.

(Added to NRS by 1977, 1107; A 1985, 2126; 1987, 2097; 1997, 258)

**NRS CROSS REFERENCES.**

Campaign practices, NRS ch. 294A

**NRS 281.525 Use of false or misleading statement regarding advisory opinion of commission; penalty.**

1. It is unlawful for any person to make, use, publish or disseminate any statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce the commission to render an opinion or to take any action related to the rendering of an opinion.

2. Any person who knowingly violates the provisions of subsection 1 is guilty of a misdemeanor.

3. The commission shall inform the attorney general or the district attorney of any case involving a violation of subsection 1.

(Added to NRS by 1985, 2122)

**NRS 281.531 Duties of attorney general.** The attorney general is the legal adviser to the commission. For each opinion he shall prepare at the direction of the commission the appropriate findings of fact and conclusions as to relevant standards and the propriety of particular conduct.

(Added to NRS by 1977, 1107; A 1985, 2126)

**NRS 281.541 Specialized or local ethics committee: Establishment; functions; confidentiality.**

1. Any department, board, commission or other agency of the state or the governing body of a county or an incorporated city may establish a specialized or local ethics committee to complement the functions of the commission. A specialized or local ethics committee may:

(a) Establish a code of ethical standards suitable for the particular ethical problems encountered in its sphere of activity. The standards may not be less restrictive than the statutory ethical standards.

(b) Render an opinion upon the request of any public officer or employee of its own organization or level seeking an interpretation of its ethical standards on questions directly related to the propriety of his own future official conduct or refer the request to the commission. Any public officer or employee subject to the jurisdiction of the committee shall direct his inquiry to that committee instead of the commission.

(c) Require the filing of statements of financial disclosure by public officers on forms prescribed by the committee or the city clerk if the form has been:

(1) Submitted, at least 60 days before its anticipated distribution, to the commission for review; and

(2) Upon review, approved by the commission.

2. A specialized or local ethics committee shall not attempt to interpret or render an opinion regarding the statutory ethical standards.

3. Each request for an opinion submitted to a specialized or local ethics committee, each hearing held to obtain information on which to base an opinion, all deliberations relating to an opinion, each opinion rendered by a committee and any motion relating to the opinion are confidential unless:

(a) The public officer or employee acts in contravention of the opinion; or

(b) The requester discloses the content of the opinion.

(Added to NRS by 1977, 1107; A 1985, 2126; 1991, 105; 1995, 2198, 2445; 1997, 640, 641)

#### ATTORNEY GENERAL'S OPINIONS.

Statutory exception to open meeting law provided for confidential opinions rendered by local ethics committee. NRS 281.541 provides specific statutory exception to open meeting law (see NRS ch. 241) which allows local ethics committee to render confidential opinion to elected city councilman. AGO 94-10 (5-24-1994)

Local ethics board may not conduct closed meeting to consider past conduct of elected city councilperson. NRS 241.020 requires all meetings of public bodies to be public meetings unless otherwise specifically provided by statute. Since no statute provides local ethics board (see NRS 281.541) with specific exemption from NRS 241.020 to conduct closed meeting to consider application of local ethics code to past conduct of elected city councilperson, such closed meeting is impermissible. (See also NRS 241.030 and 241.031). AGO 94-21 (7-29-1994)

**NRS 281.551 Commission authorized to impose civil penalties; commission required to file report concerning violation committed by public officer removable by impeachment; circumstance when violation not deemed willful; effect of code upon criminal law.**

1. In addition to any other penalty provided by law, the commission may impose on a public officer or employee or former public officer or employee civil penalties not to exceed \$5,000 for a willful violation of this chapter.

2. In addition to other penalties provided by law, the commission may impose a civil penalty not to exceed \$5,000 and assess an amount equal to the amount of attorney's fees and costs actually and reasonably incurred by the person about whom an opinion was requested pursuant to NRS 281.511, against a person who:

(a) Submits to the commission, in bad faith or with a vexatious purpose, an accusation or information that is false;

(b) Submits to the commission, in connection with a request for an opinion that the commission determines to be without merit, an accusation or information that is false; or

(c) Prevents, interferes with or attempts to prevent or interfere with the discovery or investigation of a violation of this chapter.

3. If the commission finds that a violation of a provision of this chapter by a public officer or employee or former public officer or employee has resulted in the realization by another person of a financial benefit, the commission may, in addition to other penalties provided by law, require the current or former public officer or employee to pay a civil penalty of not more than twice the amount so realized.

4. Except as otherwise provided in this subsection, and in addition to any other penalty provided by law, the commission may impose on any person who

violates any provision of NRS 294A.345 or 294A.346 a civil penalty not to exceed \$10,000. If the commission finds that a violation of NRS 294A.345 or 294A.346 occurred within 10 days before an election, including any recall or special election, the commission may impose on the person who committed such a violation a civil penalty not to exceed \$30,000.

5. If the commission finds that a violation of this chapter has been committed by a public officer removable from office by impeachment only, it shall file a report with the appropriate person responsible for commencing impeachment proceedings as to its finding. The report must contain a statement of the facts alleged to constitute the violation.

6. An action taken by a public officer or employee or former public officer or employee relating to NRS 281.481, 281.491, 281.501 or 281.505 is not a willful violation of a provision of those sections if the public officer or employee:

(a) Relied in good faith upon the advice of the legal counsel retained by the public body which the public officer represents or by the employer of the public employee;

(b) Was unable, through no fault of his own, to obtain an opinion from the commission before the action was taken; and

(c) Took action that was not contrary to a prior opinion issued by the commission to the public officer or employee.

7. In addition to other penalties provided by law, a public employee who willfully violates a provision of NRS 281.481, 281.491, 281.501 or 281.505 is subject to disciplinary proceedings by his employer and must be referred for action in accordance to the applicable provisions governing his employment.

8. NRS 281.481 to 281.541, inclusive, do not abrogate or decrease the effect of the provisions of the Nevada Revised Statutes which define crimes or prescribe punishments with respect to the conduct of public officers or employees.

9. The imposition of a civil penalty pursuant to subsections 1 to 4, inclusive, is a final decision for the purposes of judicial review.

10. In determining for the purposes of this section whether a person submitted an accusation or information in bad faith or with a vexatious purpose, the commission may consider various factors, including, without limitation:

(a) When the accusation or information was filed with or provided to the commission;

(b) Whether and, if applicable, in what manner the person who submitted the accusation or information publicly disseminated the accusation or information before the commission determined whether there was just and sufficient cause to render an opinion in the matter;

(c) Whether the accusation or information sets forth alleged facts or details that are misleading or deceptive; and

(d) Whether the accusation or information or the conduct of the person who submitted the accusation or information:

(1) Would be perceived as annoying or harassing by a reasonable person; or

(2) Demonstrates conscious disregard for the process and procedures established by the commission.

(Added to NRS by 1977, 1108; A 1987, 2097; 1991, 1600; 1993, 2244; 1995, 2446; 1997, 258, 3330, 3333)

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Officers and Public Employees ⇌ 110, 116,  
121, 122.

**WESTLAW Topic No. 283.**

C.J.S. Officers and Public Employees §§ 197  
to 208, 255 to 263.

## MISCELLANEOUS PROVISIONS

**NRS 281.553 Public officer or employee prohibited from accepting or receiving honorarium; "honorarium" defined; penalty.**

1. A public officer or public employee shall not accept or receive an honorarium.

2. An honorarium paid on behalf of a public officer or public employee to a charitable organization from which the officer or employee does not derive any financial benefit is deemed not to be accepted or received by the officer or employee for the purposes of this section.

3. This section does not prohibit:

(a) The receipt of payment for work performed outside the normal course of a person's public office or employment if the performance of that work is consistent with the applicable policies of his public employer regarding supplemental employment.

(b) The receipt of an honorarium by the spouse of a public officer or public employee if it is related to the spouse's profession or occupation.

4. As used in this section, "honorarium" means the payment of money or anything of value for an appearance or speech by the public officer or public employee in his capacity as a public officer or public employee. The term does not include the payment of:

(a) The actual and necessary costs incurred by the public officer or public employee, his spouse or his aid for transportation and for lodging and meals while the public officer or public employee is away from his residence.

(b) Compensation which would otherwise have been earned by the public officer or public employee in the normal course of his public office or employment.

(c) A fee for a speech related to the officer's or employee's profession or occupation outside of his public office or employment if:

(1) Other members of the profession or occupation are ordinarily compensated for such a speech; and

(2) The fee paid to the public officer or public employee is approximately the same as the fee that would be paid to a member of the private sector whose qualifications are similar to those of the officer or employee for a comparable speech.

(d) A fee for a speech delivered to an organization of legislatures, legislators or other elected officers.

5. A public officer or public employee who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, forfeits the amount of the honorarium.

(Added to NRS by 1991, 1592)

**WEST PUBLISHING CO.**

Officers and Public Employees ⇌ 98.

WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 224, 242.

**NRS 281.555 Purchase of goods or services by local government from member of governing body not unlawful or unethical; conditions.** The purchase of goods or services by a local government upon a two-thirds vote of its governing body from a member of the governing body who is the sole source of supply within the area served by the governing body is not unlawful or unethical if the public notice of the meeting specifically mentioned that such a purchase would be discussed.

(Added to NRS by 1987, 385)



WEST PUBLISHING CO.

Municipal Corporations ⇌ 231(1) to 231(4).

WESTLAW Topic No. 268.

C.J.S. Municipal Corporations §§ 988 et seq.

**NRS 281.557 Governmental grant, contract or lease and certain actions taken in violation of chapter are voidable; prohibited contract is void; recovery of benefit received as result of violation.**

1. In addition to any other penalty provided by law, a governmental grant, contract or lease entered into in violation of this chapter is voidable by the state, county, city or town. In a determination under this section of whether to void a grant, contract or lease, the interests of innocent third parties who could be damaged must be taken into account. The attorney general, district attorney or city attorney must give notice of his intent to void a grant, contract or lease under this section no later than 30 days after the commission has determined that there has been a related violation of this chapter.

2. In addition to any other penalty provided by law, a contract prohibited by NRS 281.230 which is knowingly entered into by a person designated in subsection 1 of NRS 281.230 is void.

3. Any action taken by the state in violation of this chapter is voidable, except that the interests of innocent third parties in the nature of the violation must be taken into account. The attorney general may also pursue any other available legal or equitable remedies.

4. In addition to any other penalty provided by law, the attorney general may recover any fee, compensation, gift or benefit received by a person as a result of a violation of this chapter by a public officer. An action to recover pursuant to this section must be brought within 2 years after the discovery of the violation.

(Added to NRS by 1991, 1593)

**FINANCIAL DISCLOSURE STATEMENT**

WEST PUBLISHING CO.

Elections ⇌ 311.1, 317.4.

Officers and Public Employees ⇌ 36(2).

WESTLAW Topic Nos. 144, 283.

C.J.S. Elections §§ 324, 329.

C.J.S. Officers and Public Employees § 46.

**ATTORNEY GENERAL'S OPINIONS.**

**Requirement that candidates for judicial office and elected judicial officers file financial disclosure statements with commission on ethics is constitutional exercise of legislative authority.**

In light of presumption of constitutionality of Nevada statutes, broad power of legislature to frame and enact laws unless specifically limited by constitution, absence of specific constitutional

restraint in this area and presence of legitimate legislative objectives in pursuing public financial disclosure statements from candidates and elected officials in Nevada, there is sufficient basis to conclude that NRS 281.561 et seq., which requires candidates for judicial office and elected judicial officers, among others, to file financial disclosure statements with commission on ethics, is constitutional exercise of legislative authority. Separation of powers doctrine does not preclude legislative branch from exercising its constitutional authority over public elections by requiring candidates and public and judicial officers to file with commission on ethics financial disclosure statements for information of general electorate. AGO 94-24 (11-30-1994)

**NRS 281.561 Filing.** Every candidate for public or judicial office and every public or judicial officer shall file with the commission, and with the officer with whom declarations of candidacy for his respective office are filed, a statement of financial disclosure, as follows:

1. A candidate for nomination, election or reelection shall file a statement of financial disclosure no later than the 10th day after the last day to qualify as a candidate for the office.

2. A public or judicial officer appointed to fill the unexpired term of an elected public or judicial officer shall file a statement of financial disclosure within 30 days after his appointment.

3. Every public or judicial officer, whether appointed or elected, shall file a statement of financial disclosure on or before March 31 of each year of the term, including the year the term expires.

4. A public or judicial officer who leaves office on a date other than the expiration of his term or anniversary of his appointment or election, shall file a statement of financial disclosure within 60 days after leaving office.

A statement filed pursuant to one of the subsections of this section may be used to satisfy the requirements of another subsection if the initial statement was filed within 3 months before the other statement is required to be filed. The public or judicial officer shall notify the commission in writing of his intention to use the previously filed statement to fulfill the present requirement. A person may satisfy the requirements of this section by filing with the commission a copy of a statement of financial disclosure which was filed pursuant to the requirements of a specialized or local ethics committee if the form of the statement has been approved by the commission.

(Added to NRS by 1977, 1108; A 1985, 2126; 1987, 2097; 1991, 1601; 1995, 2199)

#### ADMINISTRATIVE REGULATIONS.

Commission on ethics, NAC 281.015-281.185

#### ATTORNEY GENERAL'S OPINIONS.

**Public officer who resigns prior to last 6 months before expiration of his term need not file disclosure statement.** Under NRS 281.561, public officer who resigns office more than 6 months before expiration of his term (or term of his appointing authority) is no longer serving term for which filing is required and need not file financial disclosure statement for purposes of Nevada Ethics in Government Law. AGO 216 (7-12-1977), cited, AGO 88-10 (9-12-1988)

**County library trustee required to file statement of financial disclosure.** County library trustee is public officer within meaning of NRS 281.4365 and is, therefore, required to file statement of financial disclosure pursuant to NRS 281.561. AGO 86-6 (5-12-1986)

**Candidate for office of U.S. Senator not required to file statement of financial disclosure.** United States Senator from Nevada is not public officer for purposes of NRS 281.561 and, therefore, candidate for that office is not required to file statement of financial disclosure with secretary of state for review by commission on ethics. AGO 88-10 (9-12-1988)

**County employee designated by county manager as head of department or staff director is not "public officer."** Because county employee designated by county manager as head of department or staff director serves at will of county manager and board of county commissioners such employee is not public officer within meaning of NRS 281.4365 and, therefore, is not required to file statement of financial disclosure pursuant to NRS 281.561. AGO 96-15 (5-28-1996), cited, AGO 96-33 (11-8-1996)

**City manager required to file statement of financial disclosure.** City manager is public officer within meaning of NRS 281.4365 because office is established by ordinance of political subdivision of state and involves continuous exercise of public power, trust or duty. City manager, therefore, is required to file statement of financial disclosure pursuant to NRS 281.561. AGO 96-33 (11-8-1996)

**Officers appointed by city manager are not required to file statement of financial disclosure.** Officers appointed by city manager are not public officers within meaning of NRS 281.4365 because their duties are delegated to them by higher authorities. Such officers, therefore, are not required to file statements of financial disclosure pursuant to NRS 281.561. AGO 96-33 (11-8-1996)

#### **NRS 281.571 Contents; distribution of forms; costs related to production and distribution of forms.**

1. Statements of financial disclosure, as approved pursuant to NRS 281.541 or in such form as the commission otherwise prescribes, must contain the following information concerning the candidate or public or judicial officer:

(a) His length of residence in the State of Nevada and the district in which he is registered to vote.

(b) Each source of his income, or that of any member of his household. No listing of individual clients, customers or patients is required, but if that is the case, a general source such as "professional services" must be disclosed.

(c) A list of the specific location and particular use of real estate, other than a personal residence:

(1) In which he or a member of his household has a legal or beneficial interest;

(2) Whose fair market value is \$2,500 or more; and

(3) That is located in this state or an adjacent state.

(d) The name of each creditor to whom he or a member of his household owes \$5,000 or more, except for:

(1) A debt secured by a mortgage or deed of trust of real property which is not required to be listed pursuant to paragraph (c); and

(2) A debt for which a security interest in a motor vehicle for personal use was retained by the seller.

(e) If the candidate or public or judicial officer has received gifts in excess of an aggregate value of \$200 from a donor during the preceding taxable year, a list of all such gifts, including the identity of the donor and value of each gift, except:

(1) A gift received from a person who is related to the candidate or public or judicial officer within the third degree of consanguinity or affinity.

(2) Ceremonial gifts received for a birthday, wedding, anniversary, holiday or other ceremonial occasion if the donor does not have a substantial interest in the legislative, administrative, judicial or political action of the candidate or public or judicial officer.

(f) A list of each business entity with which he or a member of his household is involved as a trustee, beneficiary of a trust, director, officer, owner in whole or in part, limited or general partner, or holder of a class of stock or security representing 1 percent or more of the total outstanding stock or securities issued by the business entity.

(g) A list of all public offices presently held by him for which this statement of financial disclosure is required.

2. The commission shall distribute or cause to be distributed the forms required for such a statement to each candidate and public or judicial officer who is required to file one. The commission is not responsible for the costs of producing or distributing a form for filing statements of financial disclosure which is prescribed pursuant to subsection 1 of NRS 281.541.

3. As used in this section:

(a) "Business entity" means an organization or enterprise operated for economic gain, including a proprietorship, partnership, firm, business, trust, joint venture, syndicate, corporation or association.

(b) "Household" includes:

(1) A person who does not live in the same home or dwelling, but who is dependent on and receiving substantial support from the candidate or public or judicial officer; and

(2) A person who lived in the home or dwelling of the candidate or public or judicial officer for 6 months or more in the year immediately preceding the year in which the candidate or public or judicial officer files the statement of financial disclosure.

(Added to NRS by 1977, 1108; A 1985, 2127; 1991, 1602; 1995, 2200; 1997, 3331)

**GENERAL PROVISIONS****281.573****ADMINISTRATIVE REGULATIONS.**

Commission on ethics, NAC 281.015-281.185

**ATTORNEY GENERAL'S OPINIONS.**

Public officers and candidates need only identify specifically stocks or bonds that produced 10 percent or more of their gross income in their disclosure statement. Each candidate for

public office and each public officer making statement of financial disclosure who receives income from stocks, bonds or municipal securities is required by NRS 281.571 to identify specifically by corporate name, only those individual holdings which produced 10 percent or more of his gross income or that of any member of his household for preceding taxable year. AGO 85-6 (6-21-1985)

**NRS 281.573 Retention by commission, secretary of state, county clerk and city clerk.**

1. Except as otherwise provided in subsection 2, statements of financial disclosure required by the provisions of NRS 281.561 and 281.571 must be retained

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by the commission, secretary of state, county clerk and city clerk for 6 years after the date of filing.

2. For public officers who serve more than one term in either the same public office or more than one public office, the period prescribed in subsection 1 begins on the date of the filing of the last statement of financial disclosure for the last public office held.

(Added to NRS by 1987, 2093; A 1991, 1603)

**NRS 281.575 Candidates to receive form; instructions for completion.**

The secretary of state and each county or city clerk who receives a declaration of candidacy, acceptance of candidacy or certificate of candidacy shall give to the candidate the form prescribed by the commission for the making of a statement of financial disclosure, accompanied by instructions on how to complete the form, where it must be filed and the time by which it must be filed.

(Added to NRS by 1985, 2122; A 1987, 2098; 1997, 3475)

**NRS 281.581 Civil penalty for failure to disclose: Amount; procedure.**

A candidate or public or judicial officer who fails to file his statement of financial disclosure in a timely manner pursuant to NRS 281.561 is subject to a civil penalty and payment of court costs and attorney's fees. The amount of the civil penalty is:

1. If the statement is filed not more than 7 days late, \$25 for each day the statement is late.

2. If the statement is filed more than 7 days late but not more than 15 days late, \$175 for the first 7 days, plus \$50 for each additional day the statement is late.

3. If the statement is filed more than 15 days late, \$575 for the first 15 days, plus \$100 for each additional day the statement is late.

The civil penalty must be recovered in a civil action brought in the name of the State of Nevada by the commission in a court of competent jurisdiction and deposited with the state treasurer for credit to the state general fund.

(Added to NRS by 1977, 1109; A 1985, 2128; 1997, 3333)

**DISCLOSURE OF IMPROPER GOVERNMENTAL ACTION**

WEST PUBLISHING CO.  
Elections ⇐ 320.

WESTLAW Topic No. 144.  
C.J.S. Elections § 333.

**NRS 281.611 Definitions.** As used in NRS 281.611 to 281.671, inclusive, unless the context otherwise requires:

1. "Improper governmental action" means any action taken by a state officer or employee in the performance of his official duties, whether or not the action is within the scope of his employment, which is:

- (a) In violation of any state law or regulation;
- (b) An abuse of authority;
- (c) Of substantial and specific danger to the public health or safety; or
- (d) A gross waste of public money.

2. "State employee" means any person who performs public duties under the direction and control of a state officer for compensation paid by or through the state.

3. "State officer" means a person elected or appointed to a position with the state which involves the exercise of a state power, trust or duty, including: